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February 16, 2000

TO INTERESTED PARTIES:

PROPERTY TAX RULE 305.3
APPLICATION FOR EQUALIZATION AFTER A MANDATORY AUDIT

Enclosed is a matrix compiled from suggestions and comments received in response to our January 14, 2000 letter inviting input on the draft of Property Tax Rule 305.3, *Application for Equalization After a Mandatory Audit*. This information is provided to you in advance of the Interested Parties meeting since these suggestions will form the primary discussion topics at the meeting. To date, staff has not had time to analyze these suggestions.

There will be an Interested Parties meeting to resolve issues regarding Property Tax Rule 305.3 on February 25, 2000 in Sacramento at 450 N Street, Room 121, at 9:00 a.m. If you plan to attend this meeting, please advise Sherrie Kinkle at (916) 322-2921; e-mail skinkle@boe.ca.gov; Fax (916) 323-8765.

Thank you for your continued interest in this project.

Sincerely,

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:sk
Enclosure

PROPERTY TAX RULE 305.3
APPLICATION FOR EQUALIZATION AFTER A MANDATORY AUDIT

Comments on January 14, 2000 Draft

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
1	California Assessors' Association (Jerland)	This issue is currently being litigated and it would be our suggestion that the matter be delayed pending resolution of that litigation.	
2	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	<p>There is pending appellate litigation in the Third Appellate District involving Heavenly Valley and El Dorado County. The pending appellate decision will undoubtedly be published for citation purposes once it is issued and it is premature at this time to promulgate a rule without knowing the outcome. The appellate decision in that case will address most, if not all, of the regulatory interpretations mentioned in the proposed rule.</p> <p>The holdings in <i>Jones v. Tracy School District</i> (1980) 27 Cal.3d 99, at 107, and <i>Carmona v. Division of Industrial Safety</i> (1975) 13 Cal.3d 303, at 311-12, fn.8, note that the promulgation of administrative rules knowingly created while groundbreaking litigation is pending may well deprive the rule of the deference it may otherwise receive from the court.</p> <p>The promulgation of formal rules is a process that takes time and involves public agency resources on the part of the SBE and other public agencies or officers. The authority to create administrative rules granted to the SBE must be used in an appropriate, fair and responsible fashion and those appropriate conditions for proposed Rule 305.3 do not exist at the current time.</p>	
3	Fresno County Counsel (Grunwald)	The SBE traditionally refrains from adopting or amending rules during the pendency of litigation. The meaning of the term "subject to an escape assessment" in section 469 is the principal issue in <i>Heavenly Valley v. El Dorado County Board of Equalization</i> . The SBE should stop the process of adopting a Property Tax Rule regarding this topic until after this litigation is final.	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
4	Santa Clara County Counsel (Rees)	The State Board of Equalization must keep in mind that the legislative intent of Revenue and Taxation Code sections 469 and 1605 did not include the evisceration of the statutory requirement that applications be filed within the normal filing period. The extent to which Rule 305.3 would illogically promote or allow the untimely filing of "Prop 8" appeals on real property, based solely on some attenuated or fictitious relationship to the audit process, it would confer a benefit on business taxpayers unauthorized by statute.	
5	Clerks of the Board of Supervisors/CA Association of Clerks and Election Officials (Takade)	Clarify the rule to indicate what years are open for appeal.	
6	Sacramento County Assessor (Stieger)	The rule should clarify what document constitutes notice when no tax bill is issued due to the low-value ordinance.	
7	Clerks of the Board of Supervisors/CA Association of Clerks and Election Officials (Takade)	Clarify the rule to specify which notice triggers the 60-day period to file an application.	
8	Sacramento County Assessor (Stieger)	The rule should provide examples that illustrate how the rule works; e.g., when the audit shows a refund is appropriate, no appeal is available for that tax year.	
9	Clerks of the Board of Supervisors/CA Association of Clerks and Election Officials (Takade)	Clarify the rule to indicate whether an appeal may be filed when there is a refund resulting from overassessment.	
10	Sacramento County Assessor (Stieger)	The rule should provide an amount below which the assessor is not required to escape and the taxpayer cannot appeal. The assessor should not be required to process an escape assessment that is not cost-effective nor in compliance with the existing low-value ordinance.	
11	Clerks of the Board of Supervisors/CA Association of Clerks and Election Officials (Takade)	The rule should provide examples that will assist the clerks, boards, and taxpayers, and serve to eliminate confusion regarding the application filing process.	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
12	San Bernardino County Assessor (Sakaguchi)	The rule should include a definition of <i>assessee</i> to mean "the individual or legal entity that is the subject of the audit."	
13	Cal-Tax (Evans)	Change Title: APPLICATION FOR EQUALIZATION AFTER A MANDATORY <u>AN</u> AUDIT	
14	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (a)(1): The escape assessment, and/or	
15	Cal-Tax (Evans)	<p>Delete subsection (a): If the result of an audit conducted pursuant to section 469 of the Revenue and Taxation Code discloses property subject to an escape assessment for any year covered by the audit, then the assessee may file an application pursuant to sections 1603 and 1605 of the Revenue and Taxation Code for: (1) The escape assessment, and/or (2) The original assessment of all property of the assessee at the location of the profession, trade, or business for that year, except in those instances when the property had previously been equalized for the year in question.</p> <p>Add subsection (a): <u>(a) REQUEST FOR EQUALIZATION (1) If the result of an audit for any year discloses property subject to an escape assessment, then the assessee may file an application pursuant to sections 1603 and 1605 of the Revenue and Taxation Code for: (A) The property that is the subject of the escape assessment, and/or (B) The original assessment of all property of the assessee at the location of the profession, trade, or business for that year, except in those instances when the property has previously been equalized for the year in question. (2) If any property subject to the audit was subject to an escape assessment as defined herein for a particular tax year, the taxpayer may file an application for such location for such year irrespective of the net audit results as to all property at such location for such year.</u></p>	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
16	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (b)(1): "Result of an audit" means the total value of the property subject to the audit for each assessment year. If the total value of the property determined by the audit is higher than the assessed value on the roll, as escape assessment shall <u>may</u> be enrolled in accordance with section 533 of the Revenue and Taxation Code. If the total value of the property determined by the audit is lower than the assessed value on the roll, the assessor shall notify the assessee of the fact that a claim for cancellation or refund may be filed. <u>For purposes of determining eligibility to file an application for equalization,</u> the assessor shall not offset the total value of the property of the audit for one assessment year by the total value of the property of the audit for other assessment years. The provisions of section 155.20 of the Revenue and Taxation Code are not applicable to escape assessments made pursuant to section 469 or this regulation.	
17	Cal-Tax (Evans)	Change subsection (b)(1): DEFINITIONS. For purposes of subsection (a) of this regulation: (1) "Result of an audit" means <u>information obtained or conclusions reached during an audit of a taxpayer's books and records by an assessor</u> the total value of the property subject to the audit for each assessment year. If the total value of the property determined by the audit is higher than the assessed value on the roll, as escape assessment shall be enrolled in accordance with section 533 of the Revenue and Taxation Code. If the total value of the property determine by the audit is lower than the assessed value on the roll, the assessor shall notify the assessee of the fact that a claim for cancellation or refund may be filed. The assessor shall not offset the total value of the property of the audit for one assessment year by the total value of the property of the audit for other assessment years. The provisions of section 155.20 of the Revenue and Taxation Code are not applicable to escape assessments made pursuant to section 469 or this regulation.	
18	Amgen, Inc. (Diaz)	Subsection (b)(2): Definition of "property subject to an escape assessment" unduly restricts the rights of taxpayers granted by section 469. Whenever escaped property is discovered as a result of an assessor's audit, the taxpayer is entitled to equalization on the entire property for the year of such escape. With the words "total value" in the definition, the taxpayer will not be entitled to equalization on the entire property simply because escaped property is discovered, but only when the result of the audit reveals a net escape. Under the proposed definition, the taxpayer only has a right to "open up" past assessments when the assessor proposes an overall <i>upward</i> adjustment. The taxpayer would have no right to appeal an assessor's reassessment unless there has been an overall <i>increase</i> .	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
19	Santa Clara County Counsel (Rees)	Add to subsection (b)(2): "Property subject to an escape assessment" means the total value of the property subject to the audit for an assessment year exceeds the value of the original assessment on the assessment roll for that year as disclosed by the audit, regardless of whether an escape assessment is enrolled. <u>The assessor is the public official charged with the responsibility of preparing the local rolls. It is the assessor, and not the taxpayer, that determines whether the audit discloses "property subject to escape assessment."</u>	
20	Cal-Tax (Evans)	Change subsection (b)(2): "Property subject to an escape assessment" means the total value of the <u>any</u> property subject to the audit for an <u>any</u> assessment year exceeds the value of the original assessment on the assessment roll for that year as disclosed by the audit that was incorrectly assessed, regardless of whether an escape assessment is enrolled.	
21	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (b)(2): "Property subject to an escape assessment" means the total value of the property subject to the audit for an assessment year exceeds the value of the original assessment on the assessment roll for that year as disclosed by the audit, regardless of whether <u>provided that</u> an escape assessment is enrolled.	
22	Cal-Tax (Evans)	Change subsection (b)(3): "Original assessment" means the <u>initial</u> assessment <u>and any subsequent corrections or changes for the specific property for the roll</u> year in which the result of the audit discloses property subject to an escape assessment.	
23	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (b)(3): "Original assessment" means the assessment for the year in which the result of the audit discloses property subject to an escape assessment.	
24	Santa Clara County Counsel (Rees)	Change subsection (b)(4): "All property of the assessee" means any property, real or personal, assessed to the assessee in the year of the audit at the location at which the personal property and/or fixtures are subject to audit <u>escape assessment</u> .	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
25	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (b)(4): "All property of the assessee" means any property, real or personal, assessed to the assessee in the year of the audit at the location at which the personal property and/or fixtures are subject <u>subjected to audit</u> an escape assessment .	
26	Cal-Tax (Evans)	Change subsection (b)(4): "All property of the assessee" means any property, real or personal, assessed to the assessee <u>(or owner, where the assessee is not the owner)</u> in the year of the audit at the location <u>or locations</u> at which the <u>real property</u> , personal property and/or fixtures are subject to audit.	
27	Santa Clara County Counsel (Rees)	Change subsection (b)(5): "Location of the profession, trade, or business" means the location, for assessment purposes, of all the property that is the subject of the mandatory audit <u>escape assessment</u> .	
28	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (b)(5): "Location of the profession, trade, or business" means the location, for assessment purposes, of all the property that is the subject of the mandatory audit <u>subjected to an escape assessment</u> .	
29	Cal-Tax (Evans)	Change subsection (b)(5): "Location of the profession, trade, or business" means the location <u>or locations</u> , for assessment purposes, of all the property that is the subject of the mandatory audit.	
30	San Bernardino County Assessor (Sakaguchi)	Subsection (b)(6): "Previously equalized" should be expanded to include (1) those applications denied for nonappearance at the hearing, and (2) when the taxpayer withdraws an application and has stated that he/she has reviewed the assessment and is now in agreement with the assessor's value.	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
31	Cal-Tax (Evans)	Change subsection (b)(6): "When the property had previously been equalized for the year in question" means that a board has previously determined a value for the property, either as the result of a hearing or by approval of a stipulation. <u>Specific property or a portion or category thereof shall be considered equalized if its assessment is contested and determined within an equalization hearing. A portion or category of the assessment shall be deemed to have been the subject of the equalization hearing only to the extent the Board's decision or the stipulation specifically identifies that portion or category of the assessment that was contested and resolved in such hearing or stipulation. "Portion or category" for these purposes shall be a real property appraisal unit or a group of property that was reported or could have been reported on the 571L property statement (e.g., Machinery & Equipment, Office Furniture and Equipment, Computer Component cost of \$25,000 or less).</u>	
32	Cal-Tax (Evans)	Add subsection (b)(7): <u>"Property subject to the audit" means property identified on an audit notice presented to the property owner at the commencement of the audit. Such audit notice shall identify the property locations, assessment or parcel numbers, and tax years for all property locations that will be audited. When the assessor concludes during an audit that it is necessary to expand the property locations, assessment or parcel numbers or tax years subject to the audit, the assessor shall provide a notice to the taxpayer identifying the locations, assessment or parcel numbers or tax years being added to the audit.</u>	
33	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (c): If the audit for any tax year discloses that the property of the assessee is subject to escape assessment, the assessor shall notify the assessee of the results of the audit. At the request of the assessee, the assessor shall permit the assessee to inspect or copy any information, documents, or records relating to the audit in accordance with the provisions of Revenue and Taxation Code section 408.	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
34	Cal-Tax (Evans)	Change subsection (c): <u>(1) Upon completion of an audit of the taxpayer's books and records, the assessor shall notify the assessee in writing of the results of the audit for all property, locations, and years that were the subject of the audit. (2) If the audit for any tax year discloses that the property of the assessee is subject to escape assessment, the assessor shall notify give the assessee of the results of the audit taxpayer the assessor's written findings with respect to data that would alter any previously enrolled assessment. (3) At the request of the assessee, the assessor shall permit the assessee or his authorized agent to inspect or copy any information, documents, or records relating to the audit in accordance with the provisions of Revenue and Taxation Code section 408.</u>	
35	Santa Clara County Counsel (Rees)	Delete subsection (d)(1)(C): The document sent pursuant to paragraph 2 of section 469 of the Revenue and Taxation Code, for counties where the county auditor or tax collector elect not to send a tax bill pursuant to the provisions of sections 2611.4 or 4986.8 of the Revenue and Taxation Code. The document required by paragraph 2 of section 469 shall be sent to the taxpayer upon completion of an audit, regardless of whether a notice or tax bill is sent.	
36	Cal-Tax (Evans)	Change subsection (d)(1): <u>(1) The party affected may file an application no later than 60 days after the date of the mailing of Tthe notice referred to described in section 1605 of the Revenue and Taxation Code for purposes of filing an application shall include:.</u>	
37	Cal-Tax (Evans)	Change subsection (d)(1)(A): <u>(2) Such notice may be issued as: (A) The tax bill, for counties of the first class or any county adopting a resolution pursuant to section 1605, subdivision (c), of the Revenue and Taxation Code:;</u>	
38	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Delete subsection (d)(1)(B): A notice sent subsequent to the notice required by Revenue and Taxation Code section 531.8 but prior to the tax bill, for counties that have not adopted a resolution pursuant to section 1605, subdivision (c). If the county elects not to send such a notice, then the tax bill shall serve as notice.	

No.	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
39	County Counsels' Association, Property Tax Study Group, and the California Assessors' Association (Parker)	Change subsection (d)(1)(C): (C)(B) The document sent pursuant to paragraph 2 of section 469 of the Revenue and Taxation Code, for counties where the county auditor or tax collector elect not to send a tax bill pursuant to the provisions of sections 2611.4 or 4986.8 of the Revenue and Taxation Code, <u>except where the assessor's audit shows insufficient evidence that would alter the enrolled value.</u> The document required by paragraph 2 of section 469 shall be sent to the taxpayer upon completion of an audit, regardless of whether a notice or tax bill is sent.	
40	Cal-Tax (Evans)	Add subsection (d)(2)(D): <u>(D) A document sent pursuant to paragraph 5 of section 469 of the Revenue and Taxation Code; or</u>	
41	Cal-Tax (Evans)	Add subsection (d)(2)(E): <u>(E) A document notifying the assessee that an overassessment has occurred and that a refund will be issued by the tax collector, in those counties where the board of supervisors has adopted procedures to allow the Auditor/Controller to waive the filing of a claim for refund in the event of an overassessment.</u>	
42	Cal-Tax (Evans)	Change subsection (d)(2): (2)(3) Any notice or document sent pursuant to (A), (B), and (C) <u>paragraph 2</u> of this subsection <u>(d)</u> shall clearly indicate that it serves as notice for purposes of filing an application and shall apprise the assessee of his or her right to file an application within 60 days of the mailing of the notice or document.	
43	Cal-Tax (Evans)	Add subsection (d)(4): <u>(4) If no notice meeting the requirements of paragraphs (2) and (3) above is sent after an audit for any particular tax year, the time for filing an application with respect to such audit for such year does not commence to run.</u>	
44	Cal-Tax (Evans)	Add subsection (e): <u>(e) CORRECTIONS TO THE ROLL. (1) If the correct total value of any classification of property subject to the audit for any tax year is different than the assessed value of that property on the roll, the assessor shall correct the roll to reflect the correct amounts in accordance with section 533 of the Revenue and Taxation Code. (2) In those counties where the board of supervisors has adopted procedures to allow the Auditor/Controller to waive the filing of a claim for refund in the event of an overassessment, then the assessor shall notify the assessee of the fact that an overassessment has occurred and that a refund will be issued by the tax collector. (3) The assessor shall not offset the total value of the property of the audit for one assessment year by the total value of the property of the audit for other assessment years. The provisions of section 155.20 of the Revenue and Taxation Code are not applicable to escape assessments made pursuant to section 469 or this regulation.</u>	

